

**MINUTES  
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY**

Tuesday, October 10, 2017 - 10:00 a.m.

Commission Chambers, 2380 Washington Blvd., Ogden, Utah

*In accordance with the requirements of Utah Code Annotated Section 52-4-203, the County Clerk records in the minutes the names of all persons who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.*

**WEBER COUNTY COMMISSIONERS:** James Ebert, Kerry W. Gibson and Jim Harvey.

**OTHER STAFF PRESENT:** Ricky D. Hatch, County Clerk/Auditor; Chris Crockett, Deputy County Attorney; and Fátima Fernelius, of the Clerk/Auditor's Office, who took minutes.

- A. WELCOME** – Chair Ebert
- B. MOMENT OF SILENCE**
- C. PLEDGE OF ALLEGIANCE** – Shelly Halacy
- D. THOUGHT OF THE DAY** – Commissioner Gibson

**E. CONSENT ITEMS:**

1. Warrants #1224 and #421600-421768 in the amount of \$1,227,920.36.
2. Purchase orders in the amount of \$121,141.20.
3. Approve Weber County Human Resources Policy 3-300 Alcohol and Drug Screening, Testing and Treatment.
4. Approve Weber County Human Resources Policy 3-400 Standards of Conduct.
5. Approve Weber County Human Resources Policy 3-500 Nepotism.
6. Weber County Tax Review Committee request to refund \$136.29 to William Donoho, Parcel 24-053-0041 due to county error.
7. Weber County Tax Review Committee request to refund \$2,048.75 to Jessica Berne, Parcel 22-022-0137 due to county error.
8. Request by Community & Economic Development Department to declare Parcel 09-038-0015 as surplus property.

Commissioner Harvey moved to approve the consent items; Commissioner Gibson seconded.  
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

**F. ACTION ITEMS:**

1. **INTERLOCAL AGREEMENT WITH THE WEBER/MORGAN NARCOTICS STRIKE FORCE TO INVESTIGATE DRUG AND GANG RELATED CRIMES IN WEBER COUNTY.**

Christopher Crockett, Deputy County Attorney, stated that the Strike Force was established in 2003 and he outlined the purpose of the Strike Force. This update to the Interlocal agreement fulfills the requirement to receive federal grants. Participating agencies in the Strike Force are Ogden City, Weber County, Roy City, South Ogden City, North Ogden City, Riverdale City, Pleasant View City, Harrisville City, Morgan County, Weber State University, Utah Highway Patrol and Utah Adult Probation & Parole.

Commissioner Harvey moved to approve the Interlocal Agreement with Weber/Morgan Narcotics Strike Force to investigate drug and gang related crimes in Weber County; Commissioner Gibson seconded.  
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

2. **CONTRACTS WITH THE FOLLOWING FOR APPELLATE CONFLICT ATTORNEYS:  
EMILY ADAMS; FREYJA JOHNSON; CHERISE BACALSKI**

Bryan Baron, Deputy County Attorney, stated that the county has the obligation to provide attorneys for indigent defendants in the District Court and at the appellate level on their first appeal. Four convicted indigent defendants in an armed robbery appealed their cases. They are at odds with each other and each needs representation. The county issued an RFP and the above attorneys were selected. Chair Ebert noted that at times it is perceived that there is conflict between the public defenders and the county, however, this is not necessarily true. This is a constitutional right, which the Commission supports.

Commissioner Harvey moved to approve the contracts with the following for Appellate Conflict Attorneys: Emily Adams; Freyja Johnson; and Cherise Bacalski; Commissioner Gibson seconded.  
Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

3. **APPROVAL OF POLL WORKERS FOR THE 2017 MUNICIPAL GENERAL AND SPECIAL ELECTIONS.**

Ryan Cowley, County Elections Director, referred to the list before the Commission of the poll workers for the two School Districts and the Special Service District.

Commissioner Gibson moved to approve the poll workers for the 2017 Municipal General and Special Elections; Commissioner Harvey seconded.

Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

**G. PUBLIC COMMENTS:** None.

**H. ADJOURN**

Commissioner Harvey moved to adjourn at 10:29 a.m.; Commissioner Gibson seconded.

Commissioner Gibson – aye; Commissioner Harvey – aye; Chair Ebert – aye

Attest:

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James Ebert, Chair  
Weber County Commission

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Ricky D. Hatch, CPA  
Weber County Clerk/Auditor

10/10/2017

## AGREEMENT FOR APPELLATE CONFLICT ATTORNEY

This Agreement is made effective the 10<sup>th</sup> day of October, 2017, by and between Weber County, a body politic and political subdivision of the State of Utah, hereinafter referred to as "County," and Cherise Bacalski, hereinafter referred to as "Attorney." County and Attorney are sometimes referred to individually as "Party" and collectively as "Parties."

### WITNESSETH:

**WHEREAS**, pursuant to Chapter 32 of Title 77, Utah Code Ann., County has the responsibility to provide legal counsel to every indigent person who faces the substantial probability of deprivation of his or her liberty in both the district court and in a first appeal of right; and

**WHEREAS**, County generally contracts with Samuel Newton to provide appellate representation; however, because of a conflict of interest, it has become necessary for County to contract with alternative appellate counsel; and

**WHEREAS**, Attorney is a member of the Utah State Bar Association in good standing and admitted to practice law before the courts of the State of Utah, and Attorney is qualified to appear on behalf of indigent persons on appeal pursuant to Rule 38B of the Utah Rules of Appellate Procedure; and

**WHEREAS**, Attorney is willing to represent Davy Ray Martinez in his appeal from the Second District Court, Case No. 161900317;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained hereafter, the Parties agree as follows:

1. Attorney agrees to accept assignment of Davy Ray Martinez's case (Case No. 161900317) and assume responsibilities for the case under the following terms and conditions. Attorney agrees to appear on behalf of and represent the client's interests in said assigned case, including all procedures Attorney shall deem to be in the interest of justice and necessary to assure client an adequate opportunity to present client's claims fairly in the context of the appellate processes of the appropriate appellate court.
2. Attorney agrees to perform such legal services under the guidelines and standards set forth in the Utah Rules of Professional Responsibility and such other laws and regulations that govern the practice of law in the State of Utah and the United States of America. Attorney's duties shall include but not be limited to reviewing transcripts from the trial court; communicating with trial counsel; timely filing the notice of appeal; timely filing a brief of appellant; timely filing a reply brief of appellant; participating in oral argument; any drafting of other necessary and relevant documents.

3. Attorney agrees to promptly notify the court of any changes with regard to the indigent status of client, which changes would affect the qualifying of the client for court-appointed counsel.
4. County agrees to pay Attorney the following amounts after receiving an invoice from Attorney and upon the following events:
  - a. \$3,000 upon Attorney's filing of an Appearance of Counsel.
  - b. \$3,000 upon Attorney's filing of the brief of appellant.
  - c. Should a Petition for Writ of Certiorari be deemed necessary, Attorney agrees to give notice of and consult with the County prior to filing for certiorari review. Attorney and County will agree upon an amount of reasonable compensation for a Petition for Writ of Certiorari and to handle all briefing and argument.
  - d. Should Attorney deem it in client's interest to prosecute proceedings under Rule 23B of the Utah Rules of Appellate Procedure, or to incur any extraordinary expenses, Attorney shall submit a request for payment of such expenses to County detailing the nature and amount of additional costs and expenses. Attorney shall be compensated at \$75 per hour for such necessary work. County agrees to be responsible to Attorney for such reasonable costs and expenses as may be necessary in furtherance of such proceedings.
  - e. County shall be responsible for costs of transcripts and expenses incurred in the printing and binding of appellate briefs.
5. Attorney agrees to maintain professional malpractice insurance with limits of \$100,000 per person and an aggregate of \$300,000 and provide to County evidence of the insurance. In addition, Attorney agrees to defend, indemnify, and hold County harmless from all damage, loss, or injury, including the cost of defense, that County may suffer or be held liable for as a result of Attorney's conduct.
6. Attorney agrees to abide by the rules of Professional Conduct of the American Bar Association, the Utah State Bar Association, and the laws of the State of Utah, including but not necessarily limited to the provisions of Chapter 32 of Title 77, Utah Code Ann. (1953, as amended).
7. Attorney agrees to keep her client updated on a regular basis as to the status of the client's appeal.
8. Attorney agrees to use her best efforts to avoid any conflicts of interest which would divide loyalty of Attorney to the client.
9. Nothing in this Agreement shall prohibit Attorney from representing private clients so long as the representation of private clients does not interfere with or create a conflict of interest in the representation of the client appointed under this Agreement.

10. Attorney shall not assign nor transfer the obligations under this agreement without prior written agreement of County.
11. This Agreement may be terminated at any time for cause. Cause shall include but not be limited to a suspension or revocation of Attorney's license to practice law in the State of Utah, a breach of this Agreement, or behavior which brings disrepute to other contract attorneys or to County. County may terminate this Agreement without cause upon sixty days written notice to the other Party.
12. In the case of a breach or violation of a term of this Agreement, Attorney shall be given seven calendar days to cure the breach or violation. Failure of the Attorney to cure the breach or violation within the specified period shall result in termination of this Agreement. In the event this Agreement is terminated, the Parties agree that County may award this contract to other legal counsel and deduct the costs from the compensation identified in this Agreement.
13. Any notice required by this agreement shall be given in writing addressed to the following unless otherwise designated in writing.

FOR THE COUNTY:

Weber County Attorney  
2380 Washington Blvd., Suite 230  
Ogden, UT 84401

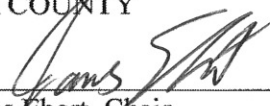
FOR THE ATTORNEY:

Cherise Bacalski  
531 N 100 E  
Vineyard, UT 84058

14. In the event this Agreement is terminated, Attorney agrees to cooperate with her successor including the filing of all necessary pleadings for withdrawal and to deliver all applicable files, information, and materials to the successor.
15. This Agreement can be changed, modified, or amended only by written agreement of the Parties.
16. Attorney is an independent contractor and is responsible to pay any and all taxes and fees which may result from the compensation paid to Attorney pursuant to this Agreement.
17. This Agreement shall constitute the entire agreement between the Parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either Party except to the extent incorporated in this Agreement.
18. This Agreement shall be governed by the laws of the State of Utah.

**IN WITNESS WHEREOF** the undersigned have affixed their respective signatures hereto the dates indicated below.

BOARD OF COUNTY COMMISSIONERS  
OF WEBER COUNTY

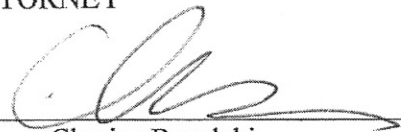
By   
James Ebert, Chair

Commissioner Harvey voted	<u>✓</u>
Commissioner Gibson voted	<u>✓</u>
Commissioner Ebert voted	<u>✓</u>

ATTEST:

  
Ricky Hatch, CPA  
Weber County

ATTORNEY

By   
Cherise Bacalski  
Date 10/3/17

10/14/2017

**AGREEMENT FOR APPELLATE CONFLICT ATTORNEY**

This Agreement is made effective the 10<sup>th</sup> day of October, 2017, by and between Weber County, a body politic and political subdivision of the State of Utah, hereinafter referred to as "County," and Emily Adams, hereinafter referred to as "Attorney." County and Attorney are sometimes referred to individually as "Party" and collectively as "Parties."

**WITNESSETH:**

**WHEREAS**, pursuant to Chapter 32 of Title 77, Utah Code Ann., County has the responsibility to provide legal counsel to every indigent person who faces the substantial probability of deprivation of his or her liberty in both the district court and in a first appeal of right; and

**WHEREAS**, County generally contracts with Samuel Newton to provide appellate representation; however, because of a conflict of interest, it has become necessary for County to contract with alternative appellate counsel; and

**WHEREAS**, Attorney is a member of the Utah State Bar Association in good standing and admitted to practice law before the courts of the State of Utah, and Attorney is qualified to appear on behalf of indigent persons on appeal pursuant to Rule 38B of the Utah Rules of Appellate Procedure; and

**WHEREAS**, Attorney is willing to represent Eric Duran and Jaime Martinez in their appeal from the Second District Court, Case No. 161900318, 161900318;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained hereafter, the Parties agree as follows:

1. Attorney agrees to accept assignment of Eric Duran and Jaime Martinez's case (Case No. 161900318, 161900319) and assume responsibilities for the case under the following terms and conditions. Attorney agrees to appear on behalf of and represent the clients' interests in said assigned case, including all procedures Attorney shall deem to be in the interest of justice and necessary to assure client an adequate opportunity to present clients' claims fairly in the context of the appellate processes of the appropriate appellate court.
2. Attorney agrees to perform such legal services under the guidelines and standards set forth in the Utah Rules of Professional Responsibility and such other laws and regulations that govern the practice of law in the State of Utah and the United States of America. Attorney's duties shall include but not be limited to reviewing transcripts from the trial court; communicating with trial counsel; timely filing the notice of appeal; timely filing a brief of appellant; timely filing a reply brief of appellant; participating in oral argument; any drafting of other necessary and relevant documents.



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8. Attorney agrees to use her best efforts to avoid any conflicts of interest which would divide loyalty of Attorney to the client.



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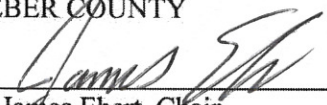
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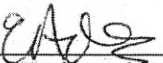
By   
James Ebert, Chair

Commissioner Harvey voted ✓  
Commissioner Gibson voted ✓  
Commissioner Ebert voted ✓

ATTEST:

  
Ricky Hatch, CPA  
Weber County

ATTORNEY

By   
Emily Adams  
Date 10/3/2017

10/10/2017

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**WHEREAS**, Attorney is a member of the Utah State Bar Association in good standing and admitted to practice law before the courts of the State of Utah, and Attorney is qualified to appear on behalf of indigent persons on appeal pursuant to Rule 38B of the Utah Rules of Appellate Procedure; and

**WHEREAS**, Attorney is willing to represent Julio Dominguez in his appeal from the Second District Court, Case No. 161900320;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained hereafter, the Parties agree as follows:

1. Attorney agrees to accept assignment of Julio Dominguez's case (Case No. 161900320) and assume responsibilities for the case under the following terms and conditions. Attorney agrees to appear on behalf of and represent the client's interests in said assigned case, including all procedures Attorney shall deem to be in the interest of justice and necessary to assure client an adequate opportunity to present client's claims fairly in the context of the appellate processes of the appropriate appellate court.
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Weber County Attorney  
 2380 Washington Blvd., Suite 230  
 Ogden, UT 84401

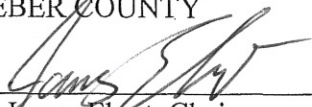
FOR THE ATTORNEY:

Zimmerman Jones Booher  
341 S. Main Street, Ste. 400  
Salt Lake City, UT 84111

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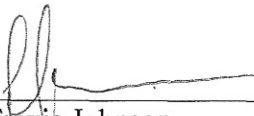
By   
James Ebert, Chair

Commissioner Harvey voted ✓  
Commissioner Gibson voted ✓  
Commissioner Ebert voted ✓

ATTEST:

  
Ricky Hatch, CPA  
Weber County

ATTORNEY

By   
Freyja Johnson  
Date 10/3/2017